

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SUE E. CHALOUX

Claimant

VS.

AMERICAN RED CROSS

Respondent

AND

**NATIONAL UNION FIRE
INSURANCE COMPANY**

Insurance Carrier

AND

SUE E. CHALOUX

Claimant

VS.

SHAWNEE COUNTRY CLUB

Respondent

AND

ST. PAUL FIRE & MARINE INS. CO.

Insurance Carrier

Docket No. 162,499

Docket No. 195,993

ORDER

Claimant appeals from a Nunc Pro Tunc Order Denying Compensation rendered in each of these two (2) docketed claims by Administrative Law Judge James R. Ward on May 17, 1995.

ISSUES

On appeal, claimant contends the Administrative Law Judge exceeded his jurisdiction in denying temporary total disability compensation and medical treatment benefits because the evidence establishes that claimant is in need of medical treatment and is temporarily totally disabled as a result of an accidental injury which arose out of and in the course of the claimant's employment with one of the two (2) named respondents.

In Docket No. 162,499 the Administrative Law Judge denied claimant medical benefits at the cost of respondent American Red Cross based upon a finding that claimant failed to meet her burden of proving that her need for medical treatment in October and November of 1994 was due to the effects of her September 26, 1990 accident.

In Docket No. 195,993 the Administrative Law Judge denied temporary total disability compensation and medical treatment at the expense of respondent Shawnee Country Club for an accident occurring on or about September 30, 1994 finding:

- (1) Claimant did not suffer an accidental injury.
- (2) Claimant's alleged accidental injury did not arise out of and in the course of her employment with the respondent.
- (3) Notice was not given within ten (10) days.
- (4) Just cause was not shown for failure to give ten (10) day notice.

Those are the issues now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues raised by claimant are subject to review on appeal from a preliminary order. K.S.A. 44-534a.

The Appeals Board finds that the evidence does not establish claimant's injury arose out of and in the course of her employment with respondent American Red Cross, nor is it proven that her condition was aggravated by the duties of her employment with respondent Shawnee Country Club. Accordingly, the Nunc Pro Tunc Order Denying Compensation should be affirmed in both cases.

Essentially, each respondent's defense is to point the finger of responsibility for claimant's current back problems at the other respondent. This confusion is at least in part due to the claimant's uncertainty as to the cause of her back complaints in September, October and November of 1994. She, in effect, asked the Administrative Law Judge, and now the Appeals Board, to sort the matter out for her by bringing her claims for compensation in the alternative against both her prior and present employers. Unfortunately, the record does not establish a claim against either.

Claimant initially injured her low back on September 26, 1990. Claim was brought against her employer American Red Cross in Docket No. 162,499. That claim was settled on November 3, 1992 leaving open the right to seek additional medical treatment.

On or about September 30, 1994, claimant began experiencing back pain and stiffness which she now relates to her job duties with respondent Shawnee Country Club. Dr. K.N. Arjunan in his report of December 18, 1994 diagnosed claimant with acute lumbar strain which by history had its onset approximately three (3) weeks prior to his seeing claimant on October 20, 1994 and which had resolved by the time of his examination on November 10, 1994. As to the issue of causation, Dr. Arjunan's report states as follows:

"The question as to whether her employment for the last couple of years has aggravated her back pain is difficult to answer. Definitely there is no evidence of any specific event that caused early onset of her back pain. Because of disc degeneration at multiple levels in the lumbar area she is

more prone to develop symptoms of lumbar strain, in that sense repetitive work activities such as bending, riding a lawnmower or pushing a lawnmower could have caused the onset of her symptoms."

The Administrative Law Judge found that the medical evidence coupled with the claimant's testimony did not prove that her injury resulted from an accident arising out of and in the course of her employment with respondent Shawnee Country Club. Furthermore, the evidence did not establish that the claimant's current symptoms were proximately related to the September 26, 1990 accident and resulting surgery so as to establish liability for her medical treatment with respondent American Red Cross. Based upon the evidence presented and for purposes of preliminary hearing the Appeals Board finds that the orders denying compensation should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the May 17, 1995 Nunc Pro Tunc Order Denying Compensation in Docket No. 162, 499 and the May 17, 1995 Nunc Pro Tunc Order Denying Compensation in Docket No. 195, 993 by Administrative Law Judge James R. Ward should be, and are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
C. Keith Sayler, Topeka, KS
Glenda L. Cafer, Topeka, KS
James R. Ward, Administrative Law Judge
Philip S. Harness, Director **ENDFIELD**